

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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SPOKANE, WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
SMITH CHROME PLATING, INC.,)
)
Defendant.)

No. CR-12-6047-FVS-1

PLEA AGREEMENT

Plaintiff, United States of America, by and through Michael C. Ormsby, United States Attorney for the Eastern District of Washington, James A. Goeke, Assistant United States Attorney, and Karla Gebel Perrin, Special Assistant United States Attorney for the Eastern District of Washington, and Defendant SMITH CHROME PLATING, INC., and the Defendant's counsel, John T. Cooke, agree to the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure as discussed below:

1. Guilty Plea and Maximum Statutory Penalties:

The Defendant, SMITH CHROME PLATING, INC., agrees to plead guilty to Count 1 the Information charging a Violation of a

PLEA AGREEMENT

1 Requirement of a Pretreatment Program (a Clean Water Act offense),
2 in violation of 33 U.S.C. §§ 1319(c)(1)(A) and 1342(b)(8). The
3 Defendant understands that this is a Class A misdemeanor which
4 carries a maximum penalty for this organizational Defendant of five
5 (5) years probation, a \$25,000 fine (per day of violation), or
6 both, and a \$125 special assessment. The Defendant further agrees
7 to waive presentment of the Information to a Grand Jury and agrees
8 to execute a Waiver of Indictment to that effect.
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10 **2. The Court is Not a Party to the Agreement:**

11 The Court is not a party to this Plea Agreement and may accept
12 or reject this Plea Agreement. Sentencing is a matter that is
13 solely within the discretion of the Court. The Defendant
14 understands that the Court is under no obligation to accept any
15 recommendations made by the United States and/or by the Defendant;
16 that the Court will obtain an independent report and sentencing
17 recommendation from the U.S. Probation Office; and that the Court
18 may, in its discretion, impose any sentence it deems appropriate up
19 to the statutory maximums stated in this Plea Agreement.
20

21 The Defendant understands that if the Court does not accept
22 the plea, does not accept this Plea Agreement, chooses to sentence
23 the Defendant to a greater or lesser sentence than the United
24 States and the Defendant have agreed upon in this Plea Agreement,
25 or rejects any of the provisions the United States and the
26 Defendant have agreed to pursuant to Federal Rule of Criminal
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1 Procedure 11(c)(1)(C), the Defendant may withdraw his plea and
2 withdraw from this Plea Agreement and the United States may also
3 withdraw from this Plea Agreement for the same reasons.

4 **3. Defendant SMITH CHROME PLATING, INC. Organization:**

5 Defendant, SMITH CHROME PLATING, INC., understands that this
6 Plea Agreement is intended to bind SMITH CHROME PLATING, INC., and
7 that if the Defendant changes names, reorganizes, merges, or
8 otherwise ceases operations in its current form, the person or
9 entity acquiring the assets or taking over the operation of
10 Defendant's company shall take over the obligations of this Plea
11 Agreement. The Defendant further agrees to provide the United
12 States Attorney's Office for the Eastern District of Washington and
13 the United States Probation Office for the Eastern District of
14 Washington with immediate notice of any name change, business
15 reorganization, sale or purchase of assets, divestiture of assets,
16 or similar action impacting the operation of its business.

17
18 No name change, change in corporate or individual control,
19 business reorganization, change in ownership, merger, change of
20 legal status, sale or purchase of assets, or similar action shall
21 alter the Defendant's responsibilities under this Plea Agreement.
22 The Defendant shall not engage in any action to seek to avoid the
23 obligations and conditions set forth in this Plea Agreement. This
24 Plea Agreement, together with all of the obligations and terms
25 thereof, shall inure to the benefit and shall bind assignees,
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1 subsidiaries, successors-in-interest, or transferees of the
2 Defendant.

3 **4. Waiver of Constitutional Rights:**

4 The Defendant, SMITH CHROME PLATING, INC., understands that by
5 entering this plea of guilty the Defendant is knowingly and
6 voluntarily waiving certain constitutional rights, including:

- 7 (a.) The right to a jury trial;
8 (b.) The right to see, hear and question the witnesses;
9 (c.) The right to remain silent at trial;
10 (d.) The right to testify at trial; and
11 (e.) The right to compel witnesses to testify.
12

13 While the Defendant is waiving certain constitutional rights,
14 the Defendant understands the Defendant retains the right to be
15 assisted through the sentencing and any direct appeal of the
16 conviction and sentence by an attorney, who will be appointed at no
17 cost if the Defendant cannot afford to hire an attorney. The
18 Defendant also acknowledges that any pretrial motions currently
19 pending before the Court are waived.
20

21 **5. Elements of the Offense:**

22 The United States and the Defendant agree that in order to
23 convict the Defendant of a Violation of a Requirement of a
24 Pretreatment Program (a Clean Water Act offense), in violation of
25 33 U.S.C. §§ 1319(c)(1)(A) and 1342(b)(8), the United States would
26 have to prove beyond a reasonable doubt the following elements:
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1 (a.) On or about the dates charged in the Information,
2 the Defendant discharged or caused to be discharged
3 industrial waste from the Smith Chrome Plating, Inc.
4 facility;

5 (b.) The pollutant was discharged into a publicly owned
6 treatment works (to wit, the City of Walla Walla's
7 wastewater treatment plant);

8 (c.) The discharge violated the terms of the Washington
9 State Waste Discharge Permit issued to Smith Chrome
10 Plating, Inc. (to wit, by failing to monitor, sample,
11 record, and report such discharges);

12 (d.) The requirement was part of an approved pretreatment
13 program (to wit, a pretreatment program approved
14 under 33 U.S.C §§ 1342(a)(3) and 1342(b)(8)).
15

16 (e.) The Defendant acted negligently.
17

18 **6. Factual Basis and Statement of Facts:**

19 The United States and the Defendant stipulate and agree that
20 the following facts are accurate; that the United States could
21 prove these facts beyond a reasonable doubt at trial; and these
22 facts constitute an adequate factual basis for Defendant SMITH
23 CHROME PLATING, INC.'s guilty plea:

24 (a.) Factual Overview.

25 Defendant SMITH CHROME PLATING, INC. is an incorporated
26 business within the State of Washington, located at 1012 North
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1 Ninth Avenue, Walla Walla, Walla Walla County, Washington ("the
2 Facility") primarily involved with hard plating chromium onto steel
3 used in agricultural equipment and has been in operation for over
4 sixty years.

5 Defendant SMITH CHROME PLATING, INC. was issued a State Waste
6 Discharge Permit No. ST-5340 ("the Permit") by the Washington
7 Department of Ecology ("DOE") on June 3, 2008. DOE issued this
8 permit through the delegated authority of Section 402 of the Clean
9 Water Act ("CWA") to ensure compliance with the relevant
10 requirements as an industrial user of the City of Walla Walla's
11 Wastewater Treatment Plant, a publicly owned treatment works
12 ("POTW"). In addition to the requirements in terms of monitoring,
13 sampling, recordkeeping, etc., the Permit set forth specific
14 discharge limits for certain pollutants as well as other
15 parameters, such as flow and pH. Pursuant to the Permit, SMITH
16 CHROME PLATING, INC. is required to submit a monthly discharge
17 monitoring report ("DMR") setting forth the details of the
18 Facility's discharges for the previous month.
19
20

21 In August 2009, Defendant SMITH CHROME PLATING, INC. informed
22 DOE that it would begin a "no discharge" program. Under this
23 program, Defendant SMITH CHROME PLATING, INC. would purportedly re-
24 use the water generated by their plating process with the use of an
25 ion exchange treatment system and a "closed loop" process. If
26 Defendant SMITH CHROME PLATING, INC. was able to eliminate all
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1 discharges to the wastewater treatment plant for one year, the
2 Permit would be rescinded along with the associated fees and
3 Defendant SMITH CHROME PLATING, INC. would no longer incur monthly
4 sampling costs. Accordingly, beginning with their August 2009 DMR,
5 the manager of the Defendant SMITH CHROME PLATING, INC. facility
6 signed and indicated that the facility had "zero discharge" for
7 that month. Defendant SMITH CHROME PLATING, INC. continued to
8 submit DMRs - signed by manager - indicating that it had "zero
9 discharge" through April 2010.
10

11 In February 2010, during a routine inspection of the Defendant
12 SMITH CHROME PLATING, INC. facility, Washington Department of
13 Ecology inspectors noticed a green garden hose leading from a sump
14 pump into a drain that leads to the sanitary sewer. The inspector
15 thought this was strange because the facility had been on a "zero
16 discharge" program.
17

18 The manager of the Defendant SMITH CHROME PLATING, INC.
19 facility ultimately admitted that soon after starting the "zero
20 discharge" program, he realized it would not work. Reusing the
21 wastewater was impacting the quality of the finished chrome product
22 and they switched back to using freshwater. In approximately
23 September 2009, the Facility started to store the wastewater, but
24 when they accumulated too much, Defendant SMITH CHROME PLATING,
25 INC. started to discharge again to the sewer in December 2009 and
26 continued to do so until at least April 2010. Despite discharging
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1 regularly during this time, Defendant SMITH CHROME PLATING, INC.
2 failed to monitor those discharges, failed to sample, and failed to
3 keep any records or report the discharges. These are all
4 violations of Defendant SMITH CHROME PLATING, INC. waste discharge
5 permit.

6 Accordingly, Defendant SMITH CHROME PLATING, INC. negligently
7 violated and caused to be violated requirements of a pretreatment
8 program approved under 33 U.S.C §§ 1342(a)(3) and 1342(b)(8), by
9 repeatedly discharging industrial waste to the City of Walla
10 Walla's Waste Water Treatment Plant without monitoring, sampling,
11 recording, or reporting such discharges, all in violation of Smith
12 Chrome's Washington State Waste Discharge Permit issued pursuant to
13 Washington Department of Ecology's approved pretreatment program.

15 This statement of facts does not preclude either party from
16 presenting and arguing, for sentencing purposes, additional facts
17 which are relevant to the guideline computation or sentencing,
18 unless otherwise prohibited in this agreement.

20 **7. Waiver of Inadmissibility of Statements:**

21 The Defendant agrees to waive the inadmissibility of
22 statements made in the course of plea discussions with the United
23 States, pursuant to Fed. R. Crim. P. 11(f). This waiver shall
24 apply if the Defendant withdraws this guilty plea or breaches this
25 Plea Agreement. The Defendant acknowledges that any statements
26 made by the Defendant and/or the Defendant's duly authorized
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1 representatives to law enforcement agents in the course of plea
2 discussions in this case would be admissible against the Defendant
3 in the United States' case-in-chief if the Defendant were to
4 withdraw or breach this Plea Agreement.

5 **8. The United States Agrees:**

6 The United States Attorney's Office for the Eastern District
7 of Washington agrees not to bring any additional charges against
8 the Defendant based upon information in its possession at the time
9 of this Plea Agreement and arising out of Defendant's conduct
10 involving illegal activity charged in this Information, unless the
11 Defendant breaches this Plea Agreement any time before or after
12 sentencing.
13

14 **9. United States Sentencing Guideline Calculations:**

15 The Defendant understands and acknowledges that pursuant to
16 United States Sentencing Guidelines (hereinafter "U.S.S.G.") §8C2.1
17 (Commentary) and § 8C2.10 (regarding the sentencing of
18 organizations), there are no specific applicable section for
19 corporate environmental crimes, including a fine range, and such
20 sentencing determinations are left to the sound discretion of the
21 Court in accordance with 18 U.S.C. §§ 3553, 3571, and 3572.
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23 **10. Criminal Fine:**

24 The Defendant and United States agree pursuant to Rule
25 11(c)(1)(C) of the Federal Rules of Criminal Procedure that the
26 Defendant will pay a criminal penalty of \$15,000 due to the length
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1 and breadth of the violations. This penalty will be paid in
2 installments as follows: \$5,000 upon entry of judgment in this
3 case; \$5,000 on or before February 4, 2014; and \$5,000 on or before
4 February 4, 2015. Failure to make such payments in accordance with
5 this schedule will be considered a violation of the Defendant's
6 probation.

7 **11. Probation:**

8 The Defendant and United States agree pursuant to Rule
9 11(c)(1)(C) of the Federal Rules of Criminal Procedure that the
10 Defendant will serve a five (5) year term of probation to include
11 the following special conditions, in addition to the standard
12 conditions of probation:
13

14 (1) The Defendant shall make payments toward its criminal
15 fine imposed in this case in accordance with the schedule set forth
16 in Paragraph 10, above;
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18 (2) The Defendant's place of business and all property
19 subject to the control of the Defendant, including vehicles,
20 storage space, file space (including electronically stored files),
21 are subject to search at the direction of the Probation Officer;

22 (3) The Defendant shall comply with the "Agreed Order
23 and Penalty Number 8971" issued by the Washington Department of
24 Ecology with respect to hazardous waste and pretreatment violations
25 that occurred at the Facility between December 2009 and May 2010.
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1 If, on or after February 4, 2015, the Defendant has complied
2 with all applicable state and federal environmental laws, has
3 received written notification from the Washington Department of
4 Ecology that all terms of "Agreed Order and Penalty Number 8971"
5 have been satisfied, and has fully paid its \$15,000 criminal fine
6 as set forth in Paragraph 10, above, the Defendant may request
7 early release from its five years of probation. If, at that time,
8 Defendant has complied with all standard and special conditions of
9 probation, the United States would have no objection to such early
10 release.
11

12 **12. Corporate Authorization:**

13 The Defendant will provide to the United States Attorney's
14 Office and to the Court written evidence in the form of a
15 resolution of its directors and/or duly authorized corporate
16 officers that the Defendant is authorized to plead guilty to the
17 Information in this case, and to enter into and comply with all the
18 provisions of this Plea Agreement. The resolution shall further
19 certify that an identified individual is authorized to take these
20 actions and that all corporate formalities, including but not
21 limited to, approval by the Defendant's directors and/or duly
22 authorized corporate officers, required for such authorization have
23 been observed.
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1 **13. Mandatory Special Penalty Assessment:**

2 The Defendant agrees to pay the \$125 mandatory special penalty
3 assessment to the Clerk of Court for the Eastern District of
4 Washington, at or before sentencing, pursuant to 18 U.S.C. § 3013
5 and shall provide a receipt from the Clerk to the United States
6 before sentencing as proof of this payment.

7 **14. Additional Violations of Law Can Void Plea Agreement:**

8 The Defendant and the United States agree that the United
9 States may at its option and upon written notice to the Defendant,
10 withdraw from this Plea Agreement or modify its recommendation for
11 sentence if, prior to the imposition of sentence, the Defendant is
12 charged or convicted of any criminal offense whatsoever or if the
13 Defendant tests positive for any controlled substance.
14

15 **15. Appeal Rights:**

16 The Defendant understands that it has a limited right to
17 appeal or challenge the conviction and sentence imposed by the
18 Court. The Defendant hereby expressly waives his right to appeal
19 his conviction and the sentence the Court imposes, including any
20 restitution order. The Defendant further expressly waives his
21 right to file any post-conviction motion attacking his conviction
22 and sentence, including a motion pursuant to 28 U.S.C. § 2255,
23 except one based upon ineffective assistance of counsel based on
24 information not now known by Defendant and which, in the exercise
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1 of due diligence, could not be known by Defendant by the time the
 2 Court imposes the sentence.

3 **16. Integration Clause:**

4 The United States and the Defendant acknowledge that this
 5 document constitutes the entire Plea Agreement between the United
 6 States and the Defendant, and no other promises, agreements, or
 7 conditions exist between the United States and the Defendant
 8 concerning the resolution of the case. This Plea Agreement is
 9 binding only upon the United States Attorney's Office for the
 10 Eastern District of Washington, and cannot bind other federal,
 11 state or local authorities. The United States and the Defendant
 12 agree that this agreement cannot be modified except in a writing
 13 that is signed by the United States and the Defendant.
 14


15 **Approvals and Signatures**

16 Agreed and submitted on behalf of the United States Attorney's
 17 Office for the Eastern District of Washington.

18 MICHAEL C. ORMSBY
 19 United States Attorney

20 
 21 JAMES A. GOEKE
 22 Assistant U.S. Attorney

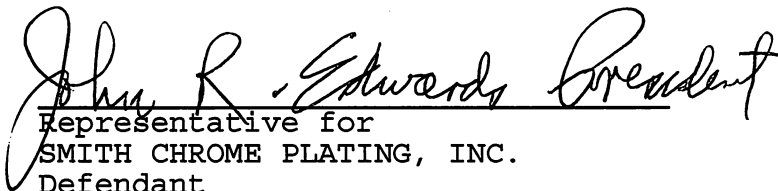
Nov 13, 2012
 Date

23 
 24 KARLA GEBEL PERRIN
 25 Special Assistant U.S. Attorney

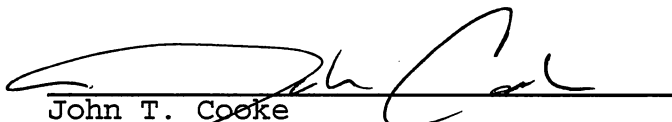
Nov 13, 2012
 Date

26 I have read this Plea Agreement and have carefully reviewed
 27 and discussed every part of the agreement with my attorney. I
 28 understand and voluntarily enter into this Plea Agreement.

1 Furthermore, I have consulted with my attorney about my rights, I
2 understand those rights, and I am satisfied with the representation
3 of my attorney in this case. No other promises or inducements have
4 been made to me, other than those contained in this Plea Agreement
5 and no one has threatened or forced me in any way to enter into
6 this Plea Agreement. I am agreeing to plead guilty because I am
7 guilty.

8
9  11/13/2012
10 Representative for Date
11 SMITH CHROME PLATING, INC.
12 Defendant

13 I have read this Plea Agreement and have discussed the
14 contents of the agreement with my client. The Plea Agreement
15 accurately and completely sets forth the entirety of the agreement
16 between the parties. I concur in my client's decision to plead
17 guilty as set forth in the Plea Agreement. There is no legal
18 reason why the Court should not accept the Defendant's plea of
19 guilty.

20
21  November 13, 2012
22 John T. Cooke Date
23 Attorney for the Defendant
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27
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